

16-1519 LAGOS V. UNITED STATES

DECISION BELOW: 864 F.3d 320

LOWER COURT CASE NUMBER: 16-20146

QUESTION PRESENTED:

Under the Mandatory Victims Restitution Act (MVRA), courts must order the defendant to "reimburse the victim for lost income and necessary child care, transportation, and other expenses incurred during participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense." 18 U.S.C. 3663A(b)(4).

In the decision below, the Fifth Circuit, adopting the decisions of multiple courts of appeals, held that this provision covers the costs of internal investigations and private expenses that were "neither required nor requested" by the government; these private costs were incurred *outside* the government's official investigation, and, indeed, were incurred *before* the government's investigation even began. In reaching this conclusion, the Fifth Circuit expressly rejected the "opposite conclusion" from the D.C. Circuit, which itself "recognize[d]" but "respectfully disagree[d]" with the decisions of four other courts of appeals. Judge Higginson concurred below, acknowledging that he was bound by circuit precedent, but "agree[d]" with the D.C. Circuit's persuasive interpretation" of the statute.

The courts of appeals are clearly and intractably divided over this important and recurring question of statutory interpretation—one that repeatedly occurs whenever companies detect hints of fraud and conduct an internal investigation.

The question presented is:

Whether Section 3663A(b)(4) covers costs that were "neither required nor requested" by the government, including costs incurred for the victim's own purposes and unprompted by any official government action.

CERT. GRANTED 1/12/2018